

**HARRY FREITAS, DIRECTOR**

**MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** 1821 Almaden Road Residential

**PROJECT FILE NUMBER:** PDC13-034

**PROJECT DESCRIPTION:** Planned Development Rezoning from the R-1-5 Single Family Residence Zoning District to the RM(PD) Planned Development Zoning District to allow development of up to 96 multi-family attached residential units in an 5-story building on an approximately 1.8 gross acre site.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** The project site is located at the west side of Almaden Road, approximately 660 feet south of Willow Glen Way in San José, California. The addresses associated with the project site are 1821, 1833, 1849, 1863, 1873, and 1807 Almaden Road. The Assessor's Parcel Numbers (APNs) are 455-21-050, 455-21-051, 455-21-052, 455-21-053, 455-21-054, and 455-21-055 on the Santa Clara County Assessor's Parcel Map.

**COUNCIL DISTRICT:** 6

**APPLICANT CONTACT INFORMATION:** SiliconSage Builders, LLC, 3330 Bowers Avenue, Suite 130, Santa Clara, CA 95054

**FINDING:**

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

## **MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

- I. AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.
- II. AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.

### **III. AIR QUALITY.**

**Impacts AIR-1:** Construction activities associated with the proposed project would expose children living near the project site to temporary TAC emissions in excess of acceptable risk thresholds.

#### **Mitigation and Avoidance Measures**

The project design features for construction include BAAQMD recommended "Best Management Practices" along with construction equipment selection, techniques, and scheduling that reduce impacts. These construction design features are intended to establish a process that minimizes fugitive dust and exhaust emissions that protect the health and safety of nearby sensitive receptors such that temporary construction emissions would not exceed the BAAQMD significance thresholds for community risk and hazard impacts.

- MM AIR 1-1:** All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- MM AIR 1-2:** All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- MM AIR 1-3:** All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- MM AIR 1-4:** All vehicle speeds on unpaved roads shall be limited to 15 mph.
- MM AIR 1-5:** All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- MM AIR 1-6:** Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- MM AIR 1-7:** All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- MM AIR 1-8:** Post a publicly visible sign with City of San Jose Code Enforcement Division telephone number (408) 535-7770 for potential dust complaints. The City of

San Jose shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**MM AIR 1-9:** All diesel-powers off-road equipment larger than 50 horsepower and operating at the site for more than two days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.

**MM AIR 1-10:** Minimize the number of hours that equipment will operate, including the use of idling restrictions.

These measures are intended to establish a process that minimizes fugitive dust and exhaust emissions that protect the health and safety of nearby sensitive receptors such that temporary construction emissions would not exceed the BAAQMD significance thresholds for community risk and hazard impacts.

Implementation of measures 1-1 through 1-8 will reduce exhaust emissions by five percent and fugitive dust emission by 50 percent. Implementation of all measures will reduce exhaust emissions by 90 percent. With implementation of the identified mitigation measures, the residential child cancer risk during construction would be reduced to three cases per million, and the maximum annual PM<sub>2.5</sub> concentration would be reduced to 0.21 µg/m<sup>3</sup>. The emissions would be below the established thresholds and would result in a less than significant impact.

**Impact AIR-2:** Construction activities would generate dust and other particulate matter that could impact adjacent and nearby residents.

#### **Mitigation and Avoidance Measures**

The following mitigation measures will be implemented during construction to reduce dust impacts:

**MM AIR 2-1:** All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

**MM AIR 2-2:** All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

**MM AIR 2-3:** All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

**MM AIR 2-4:** All vehicle speeds on unpaved roads shall be limited to 15 mph.

**MM AIR 2-5:** All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

**MM AIR 2-6:** Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

**MM AIR 2-7:** All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be

checked by a certified mechanic and determined to be running in proper condition prior to operation.

**MM AIR 2-8:** Post a publicly visible sign City of San Jose Code Enforcement Division telephone number (408) 535-7770 for potential dust complaints. The City of San Jose shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

As discussed for Impact AIR-1, implementation of the proposed mitigation will reduce dust emissions by 50 percent. As a result, construction activities would reduce dust emissions by 50 percent. As a result, construction activities would have a less than significant dust impact.

#### **IV. BIOLOGICAL RESOURCES.**

**Impact BIO-1:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

##### **Mitigation and Avoidance Measures**

The following mitigation measures will be implemented during construction to avoid abandonment of raptor and other protected migratory birds nests:

**MM BIO 1-1:** Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31.

**MM BIO 1-2:** If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30) and no more than 30 days prior to the initiation of these activities during the later part of the breeding season (May 1 through August 31). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department of Fish and Wildlife, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

With implementation of the identified mitigation measures, the project's impact to nesting birds and raptors would be less than significant.

**Impact BIO-2:** Construction activities associated with the proposed project could result in the damage or loss of up to six trees on adjacent properties.

##### **Mitigation and Avoidance Measures**

The following avoidance measures are included in the project to reduce impacts to off-site trees during all construction activities, such as clearing, grading, demolition, excavation, and building:

- MM BIO 2-1:** To the extent feasible, no site clearing, grading, excavation, or construction shall occur within the drip line of existing off-site trees not slated for removal.
- MM BIO 2-2:** If site clearing, grading, excavation, or construction must occur within the drip line of existing trees, these activities shall be done under direct supervision of a Certified Arborist (Certification of International Society of Arboriculture). No cutting of any part of private trees, including roots, shall be done without direct supervision of the Certified Arborist and prior notification of the owners of the trees.
- MM BIO 2-3:** Materials, equipment, temporary buildings, fuels, paints, and other construction items shall not be placed within the drip line of existing trees.
- MM BIO 2-4:** Any cutting of existing roots shall be done with approved equipment under the direct supervision of the Certified Arborist.
- MM BIO 2-5:** Grading shall not create drainage problems for trees by channeling water into them, or creating sunken areas.

With supervision of site clearing and construction activities by a Certified Arborist and implementation of the arborist's recommendations in accordance with International Society of Arboriculture standards, adverse impacts to adjacent trees would be avoided.

## **V. CULTURAL RESOURCES.**

- Impact CUL – 1:** Subsurface cultural resources could be uncovered and disturbed during demolition/construction of the proposed project, resulting in a significant impact to archaeological materials.

### **Mitigation and Avoidance Measures**

The following project-specific mitigation measures will be implemented during construction to avoid significant impacts to unknown subsurface cultural resources:

- MM CUL-1.1:** A qualified archaeologist will be on-site to monitor the initial excavation of native soil on the project site once all pavement and engineered soil is removed. After monitoring the initial excavation in this area, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on-site, no additional monitoring will be required.
- MM CUL-1.2:** In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped, the Director of Planning, Building and Code Enforcement will be notified, and the archaeologist will examine the find and make appropriate recommendations prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning, Building and Code Enforcement.

**MM CUL-1.3:** In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

**VI. GEOLOGY AND SOILS.** The project will not have a significant impact due to geology and soils, therefore no mitigation is required.

**VII. GREENHOUSE GAS EMISSIONS.** The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

**VIII. HAZARDS AND HAZARDOUS MATERIALS.**

**Impact HAZ-1:** Implementation of the proposed project could expose construction workers and future occupants and maintenance workers to contaminated soil.

**Mitigation Measures:** The project includes implementation of the following mitigation measures:

**MM HAZ-1.1:** Prior to demolition, household hazardous materials will be removed from existing buildings to prevent contamination to the soil on-site and be disposed of in accordance with Federal, State, and local regulations.

**MM HAZ-1.2:** After demolition of the buildings and hardscape, but prior to the issuance of grading permits, soil samples shall be taken to determine the levels of contamination in the soil from previous agricultural and historic operations including soil quality around garages where automobile repairs or refueling were undertaken.

**MM HAZ-1.3:** For soil assessment of prior site agricultural use, native soil samples collected from the approximate surface of the native soil, to 0.5 foot depth, shall be analyzed for organochlorine pesticides and pesticide related metals (e.g. arsenic, lead, and mercury). Additional samples to the proposed depth of excavation also may be required. The soil sampling results will be compared to appropriate risk-based screening levels and submitted to the Santa Clara County Department of Environmental Health (SCCDEH) and the City's Director of Planning, Building and Code Enforcement for review prior to issuance of grading permits. If soil analytical results exceed the screening levels for construction worker safety and residential uses, then the SCCDEH will determine if additional oversight is needed.

**MM HAZ-1.4:** Areas with likely contamination from previous automotive businesses and automobile storage on-site will be tested for petroleum hydrocarbons and contaminated soils above residential Environmental Screening Levels (ESLs) will be excavated. These materials may require special handling and disposal. These materials will be properly managed and disposed of at an appropriate off-site disposal facility.

**MM HAZ-1.5:** If contaminated soils are found in concentrations above established thresholds for construction worker and residential safety, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site. A SMP will be prepared to establish management practices for handling soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage groundwater that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the, the City's Director of Planning, Building and Code Enforcement, and copied to the Environmental Service Department's Environmental Compliance Officer.

**Impact HAZ-2:** Removal of on-site septic systems could expose construction workers, future on-site maintenance workers, and future residents to contaminated soil.

**Mitigation Measures:** The project includes implementation of the following mitigation measures:

**MM HAZ-2.1:** The project will remove the remaining active septic tanks, any associated piping or other subsurface features, and surrounding soils if obviously affected or required by permit from the overseeing agency, and perform soils testing if and as required by the City of San José. Removal of the septic systems will generate soil, debris, and other materials requiring off-site disposal. The project will need to follow septic tank abatement procedures either with the SCCDEH or the City's Building Division, at the City's discretion.

- The SCCDEH septic tank abatement procedures require: completion of the Land Use Service form; following the County's Building Department's Building Sewer Installation/Septic System Abandonment Requirements; and inspections by the SCCDEH's Inspector to verify the abatement process and property sewer installations for the new development.
- The City's septic tank abatement procedures require: clearance from the Public Works Department prior to issuing a plumbing permit for abandonment of a Private Sewage Disposal System; a plot plan with the location, size, and depth of the septic tanks for a Building Plan Review; a demolition, drainage, and compaction plan certified by a State licensed engineer prior to issuance of a Building permit; complete removal of waste from septic system areas and fill areas with compatible material (e.g. sand and pea gravel); and a Health and Safety Survey performed by the Building Division Inspector prior to issuance of a plumbing permit.


- IX. HYDROLOGY AND WATER QUALITY.** The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.
- X. LAND USE AND PLANNING.** The project will not have a significant land use impact, therefore no mitigation is required.
- XI. MINERAL RESOURCES.** The project will not have a significant impact on mineral resources, therefore no mitigation is required.
- XII. NOISE.** The project will not have a significant noise impact, therefore no mitigation is required.
- XIII. POPULATION AND HOUSING.** The project will not have a significant population and housing impact, therefore no mitigation is required.
- XIV. PUBLIC SERVICES.** The project will not have a significant impact on public services, therefore no mitigation is required.
- XV. RECREATION.** The project will not have a significant impact on recreation, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC.** The project will not have a significant traffic impact, therefore no mitigation is required.
- XVII. UTILITIES AND SERVICE SYSTEMS.** The project will not have a significant impact on utilities and service systems, therefore no mitigation is required.
- XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.** The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

#### **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **March 9, 2015** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;  
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Harry Freitas, Director  
Planning, Building and Code Enforcement

  
Deputy

Circulation period, from February 17, 2015 to March 9, 2015.